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JAMES H. McKENNEY,
Clerk

Supreme Court of the United States.

SECURITY TRUST COMPANY, Administrator, Etc.,

Plaintiff in Error and Petitioner,

vs.

BLACK RIVER NATIONAL BANK OF LOWVILLE,

Defendant in Error.

PETITION AND NOTICE ON APPLICATION FOR WRIT OF CERTIORARI.

EDMUND S. DURMENT,
ALBERT R. MOORE,
Attorneys for Petitioner.

United States Circuit Court Of Appeals.

Eighth Circuit.

SECURITY TRUST COMPANY, Administrator, Etc.,

Plaintiff in Error,

vs.

BLACK RIVER NATIONAL BANK OF LOWVILLE,

Defendant in Error.

The petitioner respectfully shows to the court:

In Minnesota, Probate Courts are courts of record, by the constitution of the state given exclusive jurisdiction of the estates of deceased persons. The legislature has adopted a Probate Code providing for the administration of the estates of deceased persons in that court. It provides that the court,

on issuing letters testamentary or of administration shall make an order limiting the time within which claims against the deceased shall be presented to that court for examination and allowance, which time shall not be less than six months nor more than one year from the date of the order; also that no claim or demand shall be received after the expiration of the time so limited, unless for good cause shown the court may in its discretion receive, hear and allow such claim, but no claim shall be received or allowed unless presented within one year and six months from the publication of the order and before final settlement.

The statute also provides for three weeks publication of the order, and provides that all claims arising on contract must be presented to the Probate Court within the time limited in such order, and that any claim not so presented is barred forever. The order in which claims shall be paid is fixed by statute, and provision is made for appropriating all the property, real and personal, if necessary, to pay debts.

Statute also provides that "when the estate is *fully administered*, the executor or administrator shall petition the Probate Court for an order fixing a time and place in which it will examine, settle and allow the final account of the executor or administrator, and for the assignment of the residue of the estate to the persons entitled thereto by law."

The final account must be filed with the petition, and the order for the hearing must be published for three weeks. The court is required, if on ex-

amination the account is found just and correct to *allow and settle the same*, and upon satisfactory evidence to determine the rights of the persons to the residue of the estate, make a decree accordingly assigning said residue to the persons entitled thereto by law, and such persons are authorized to demand and recover their respective shares from the executor or administrator, or any other person having the same.

It is settled by the Supreme Court of the state of Minnesota.

1. That a failure to present such claim to the Probate Court is a complete bar—not only as against the estate as such, but also as against persons taking under the decree of distribution.

2. That the making of such decree of distribution operates to transfer the title to the personal property and right of possession of the real property to the persons named in the decree of distribution.

3. That the Probate Court is empowered to make but one decree of distribution and that only after the estate has been fully administered.

4. That when the decree of distribution has been made there is no longer any estate of the decease and the jurisdiction of the Probate Court is at an end; that the Probate Court does not retain jurisdiction even to enforce distribution in accordance with the decree, but resort must be had to another court to obtain possession if it be withheld

from the persons to whom it is decreed in the decree of distribution.

The statutes do not in terms provide for the discharge of an administrator, but seem to contemplate that the settlement and allowance of the final account and the entry of the decree of distribution shall have that effect. The Supreme Court of Minnesota has held that no formal order in terms discharging an administrator or executor is necessary, but that any action by the court showing the intent to close the administration is sufficient.

The Probate Court is also authorized, at any time, to correct its records.

The statutes of the state provide that no action shall be commenced in any *state court* to recover on any such claim as above mentioned, but gives a right of appeal from the Probate Court to the District Court from the disallowance of the claim.

All the provisions above mentioned have been in force since long prior to the year 1894.

Sumner W. Matteson was a citizen of Minnesota, residing in Ramsey County, from prior to the year 1894, and died intestate in said county in July, 1895, leaving real and personal property in that county and elsewhere in the state of Minnesota. His estate was duly probated in the Probate Court of that county, this petitioner being appointed administrator. An order was duly made and published limiting the time within which to present claims against the estate to six months. The time fixed expired, the estate was fully ad-

ministered and after notice as required by statute the administrator's final account was settled and allowed and a final decree of distribution duly entered on April 27, 1896, distributing all the estate of the deceased in Minnesota, and the estate was distributed in accordance with the decree of distribution.

The Black River National Bank of Lowville, N. Y., held certain notes of the deceased executed in 1894. The officers of the bank knew as early as August, 1895, that the deceased had died in Ramsey county, a resident thereof, but it did not present its claim on said notes to the Probate Court nor commence any action or proceeding in any court to establish its claim until in January, 1897, more than eight months after final settlement of the estate. It then commenced an action in the United States Circuit Court in Minnesota against this petitioner as administrator to recover on the notes, claiming in his complaint that the estate had not been finally settled, but was then in process of probate. This petitioner answered setting up that the estate had been fully administered, its final account as administrator settled and allowed and decree of distribution duly entered on April 27, 1896; that he was no longer administrator, there was no longer any estate of the deceased, and that the claim was barred by virtue of the statutory provisions above mentioned. The facts were stipulated, and the action tried on an agreed statement of facts, from which it appeared that the estate had been administered strictly in accordance with the

requirements of the statutes of Minnesota and that everything required by the statutes of Minnesota had been done as early as April 27, 1896. The Circuit Court refused to recognize the statutes of the state of Minnesota above mentioned and the said action and decree of said Probate Court as binding on citizens of other states than Minnesota, and gave judgment on April 17, 1899, for the bank for $6,782.89 and ordered it to be certified to said Probate Court as a claim duly established and allowed against the estate of said deceased. The judgment of the Circuit Court was taken to the Circuit Court of Appeals, Eighth Circuit on writ of error. It was admitted by defendant in error, on the argument in said Circuit Court of Appeals, that it had no cause of action which it could enforce in any court of the state of Minnesota, if it had chosen to resort to the state courts, but it was claimed that neither the statutes of the state of Minnesota nor the action or decree of said Probate Court was binding on it because it was a citizen of the state of New York. The said Circuit Court of Appeals so held, and refused to recognize the said statutes of the state of Minnesota and the said action and decree of said Probate Court as binding upon non-citizens of the state of Minnesota, and by its judgment of October 17, 1900, affirmed the decision of the said Circuit Court.

Your petitioner further shows that said judgment and the opinion of said court of appeals is contrary to the settled law of the state of Minnesota, as established, declared and interpreted by

the state Supreme Court, and if it be upheld deprives the state of the right to give any effective administration to estates of its own citizens, and necessarily throws the administration of such estates, so far as non-resident creditors are concerned, into the federal courts—for state courts cannot be expected to hold one law to govern citizens of the state and another to apply in case of non-residents, nor can they be expected to repeal the state statutes and overrule their recognized decisions out of deference to any federal court of less dignity or authority than the Supreme Court of the United States. Not only is this decision of great moment to the state of Minnesota, but systems of probate adopted by many states are so similar to the system in Minnesota, that the decision rendered in this action, if it stands, will create widespread confusion outside the state of Minnesota, as well as in Minnesota.

The question is one of such importance, that the Circuit Court of Appeals, upon application entered the following order:

"For good cause shown, and on application of counsel for plaintiff in error,

It is now here ordered that the mandate in this cause be, and the same is hereby stayed for a period of thirty days from this date pending an application to the Supreme Court of the United states by counsel for plaintiff in error for a writ of certiorari in the above entitled cause.

December 21, 1900."

(See record, pp. 44, 45).

The issues in this action were the same as in the case of Security Trust Co. v. Dent, receiver,

The two actions were tried at the same time in the Circuit Court, and were argued together in the Court of Appeals. The Court of Appeals disposed of this case on the opinion in the case of Security Trust Co. v. Dent. The decision of the Court of Appeals in the case of Security Trust Co. v. Dent is not final, and plaintiff in error is entitled in that case, as of right, to remove the judgment to this Supreme Court of the United States on writ of error. It has taken the necessary steps to have such writ of error issued, and that judgment will have been removed to the Supreme Court by the time this petition shall be presented. If that judgment be reversed by the Supreme Court the judgment in this action must, nevertheless, stand, unless it be ordered that the record in this case be certified to this court by said Court of Appeals. Manifestly, even though the importance of the questions involved would not require the court to make such an order, justice would require, the case having been disposed of on the opinion in the Dent case and the amount of the judgment being over six thousand dollars, that this case should accompany the Dent case into the Supreme Court of the United States.

Wherefore your petitioner, the plaintiff in error in the said Circuit Court of Appeals, prays that a writ of certiorari may issue out of this, the Supreme Court of the United States, to said Circuit Court of Appeals for the Eighth Circuit, for the removal of the judgment and record in the said cause, now remaining in said Court of Appeals, in-

to the Supreme Court of the United States, in order that said judgment and proceedings may be reviewed and the errors therein corrected.

Dated January 8, 1901.

EDMUND S. DURMENT,
ALBERT R. MOORE,
Attorneys for Petitioner.

Gentlemen:

Please take notice that the foregoing petition for writ of certiorari to issue to the Circuit Court of Appeals, Eighth Circuit, will be presented to the Supreme Court of the United States, at Washington, D. C., on Saturday, the 19th day of February, A. D. 1901, at ten o'clock in the forenoon, or at such later hour on said day as the said court will hear said petition; and in case the said court will not receive said petition on that day, the same will be presented to said Supreme Court of the United States on the opening of said court on Monday, 21st day of January, A. D. 1901, or as soon thereafter as the court will receive and hear the same.

Respectfully,

EDMUND S. DURMENT,
ALBERT R. MOORE,
Attorneys for Plaintiff in Error.

To Edward C. Stringer, McNeil V. Seymour, Attorneys for Defendant in Error.

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Office Supreme Court
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Brf. of Durment for Petitioner.

Supreme Court of the United States.

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SECURITY TRUST CO., As Administrator, Etc.,
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BRIEF ON PETITION FOR WRIT OF CERTIORARI.

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BRIEF ON PETITION FOR WRIT OF CERTIORARI.

The statutes of Minnesota, mentioned in the petition for certiorari are the following, to be found in "General Statutes 1894":

Constitution Art. VI, Sec. 7. "There shall be established in each organized county in the state a probate court, which shall be a court of record, and be held at such times and places as may be proscribed by law. * * * A probate court shall have jurisdiction over the estates of deceased

persons, and persons under guardianship, but no other jurisdiction, except as prescribed by this constitution."

General Statutes 1894:

Section 4523. "The probate court at the time of granting letters testamentary or of administration, shall make an order allowing to the executor or administrator a reasonable time, not exceeding one year and six months, for the settlement of the estate."

Section 4524. "The probate court may, upon good cause shown by the executor or administrator, extend the time for the settlement of the estate not exceeding one year at a time, unless in the judgment of the court a longer time be necessary."

Sec. 4527. "When there is not sufficient personal estate in the hands of the executor or administrator to pay all the debts and legacies and the allowance to the widow and minor children, the probate court, may on petition of the executor or administrator order the sale of the real estate or so much thereof as may be necessary to pay the same."

Sec. 4471, provides that real estate shall descend subject to the debts of the intestate.

Section 4638. "Every executor or administrator shall render his account of administration within the time allowed him for the settlement of the estate and at such other time as he is required by the court, until the estate is wholly settled."

Section 4639: "When the estate is fully administered, the executor or administrator shall petition the probate court for an order fixing a time and place in which it will examine, settle and allow the final account of the executor or administrator, and for the assignment of the residue of the estate to the persons entitled thereto by law. The final account shall be filed in the probate court at the time of filing said petition."

Section 4640. "Upon the filing of said petition

the court shall make an order fixing a time and place for hearing the same. Said order shall be published according to law."

Section 4641. "On hearing such petition, the probate court shall examine every executor and administrator upon oath as to the truth and correctness of his account before the same is allowed; but such examination may be omitted when no objection is made to the allowance of the account, and there is no reason to doubt the justness and correctness thereof; and the heirs, legatees and devisees may be examined on oath upon any matter relating to the account of any executor or administrator, whenever the correctness thereof is called in question. If from such examination the account is found just and correct the probate court shall allow and settle the same, and upon satisfactory evidence shall determine the rights of the persons to the residue of said estate and unless partition is asked for and directed as hereinafter provided, make a decree accordingly, and assigning said residue to the persons thereto entitled by law."

Section 4642. "In such decree the court shall name the persons and the proportion or parts to which each is entitled, and if real estate, give a description as near as may be of the land to which each is entitled; and such persons may demand and recover their respective shares from the executor or administrator, or any other persons having the same; and a certified copy of any decree of distribution of real estate may be recorded in the office of the register of deeds in every county in this state in which are situated any of the lands described in such decree; and such register of deeds shall enter in his reception book the name of the deceased as grantor, and the names of the heirs, legatees or devisees, as grantees, and shall make in such reception book so many separate grantor and grantee entries for such decree as there are persons taking real estate in such county under said decree."

Section 4509. "At the time of granting letters testamentary or of administration, the court shall

make an order limiting the time in which creditors may present claims against the deceased for examination and allowance, which shall not be less than six months nor more than one year from the date of such order; said order shall fix the time or times and place in which the court will examine and adjust claims and demands of all persons, against deceased. No claim or demand shall be received after the expiration of the time so limited, unless for good cause shown the court may in its discretion, receive, hear and allow such claim upon notice to the executor or administrator, but no claim shall be received or allowed unless presented within one year and six months from the time when notice of the order is given, as provided in the next section, and before final settlement, and the allowance or disallowance of any claim shall have the same force and effect as a judgment for or against the estate."

Section 4510. "The order prescribed in section one hundred and two shall be published according to law, and shall be notice to all creditors and persons interested."

Section 4511: "All claims arising upon contracts, whether the same be due, not due, or contingent, must be presented to the probate court within the time limited in said order, and any claim not so presented is barred forever; such claim or demand may be pleaded as an offset or counterclaim to an action brought by the executor or administrator. All claims shall be itemized, and verified by the claimant, his agent or attorney, stating the amount due, that the same is just and true, that no payments have been made thereon which are not credited, and that there are no offsets to the same to the knowledge of affiant. If the claim be not due, or be contingent, when presented, the particulars of such claim must be stated. The probate court may require satisfactory vouchers or proofs to be produced in support of any claim."

Section 4514. "No action at law for the recov-

ery of money only shall be brought in any of the courts of this state against any executor, administrator or guardian upon any claim or demand which may be presented to the probate court except as provided in this code. No claim against a decedent shall be a charge against or lien upon his estate unless presented to the probate court as herein provided within five years after the death of such decedent: Provided that this provision shall not be construed as affecting any lien existing at the date of such death. Provided further, that said provision shall not be construed as affecting the right of a creditor to recover from the next of kin, legatee or devisee to the extent of assets received. This provision shall be applicable to the estate of persons who died prior as well as to those who may die after adoption of this code."

Section 4517. "Upon the allowance or disallowance of any claim the court shall make its order allowing or disallowing the same. The order shall contain the date of allowance and the amount disallowed, and be attached to the claim with the offsets if any."

Section 4522. "In case of appeal from the allowance or disallowance of any claim in whole or in part, the district court shall certify to the probate court the decision or judgment rendered therein."

That the statute requiring claims to be presented to the probate court within the time limited, is a statute of limitation, and a failure to present the claim within the time limited an absolute bar, is established by the following decisions:

39 Minn. 212, Fern v. Leuthold. The court says (pages 216, 217):

"We think, however, they must be reversed on the ground that the respondents had no standing in court as creditors; having neither presented their claims for allowance to the probate court within

the time limited for that purpose, nor having any suit pending on them against Fern at the time of his death. Not having been presented to the probate court for allowance, the claims were certainly barred under the provisions of Gen. Stat. c. 53, Sec. 14, unless saved by section 16 of the same chapter, by reason of the pendency of an action on them at the time of Fern's death. But we take it that, to bring the case within this section, the specific claim or cause of action must be in litigation at the time of the debtor's decease. Only the claim thus in litigation can be paid without being proved in the probate court."

47 Minn. 382, *Hill v. Nichols* (page 384):

"In view of the effect given by the decision in *Bryant v. Livermore*, *supra*, to similar provisions in the statutes in force prior to the adoption of the new Code (see Gen. St. 1878, Ch. 53, Sec. 14), there can be no doubt that, by force of this section 104 (Sec. 4511), the failure to present a claim to the probate court would not only bar the assertion of the claim against the estate, but preclude a recovery against the heir."

61 Minn. 361, *Hantzch v. Massolt*, was an action to recover from the heirs to the extent of assets received. The court says (page 366):

"If the plaintiff could have presented his claim to the probate court and thereby secured its payment from the estate of the sureties in the ordinary course of administration, this action is barred; otherwise not."

Again, in construing Section 4511, above cited, as to what contingent claims therein mentioned are barred by failure to present to the probate court, it is said (page 368):

"This section means that all contingent claims which become absolute and capable of liquidation, whether due or not, before the expiration of the

time limited for proving claims, must be so presented, or they are barred."

61 Minn. 520, *Oswald v. Pillsbury*, recognizes this as the rule.

66 Minn. 246, *State v. Probate Court of Rock County*, recognizes this rule. The court says (pages 249, 250):

"If then, the indebtedness depended upon no contingency, and the right to recover by suit was unqualified up to the time of Thompson's decease, the claim was one to be presented to the probate court for allowance and payment in the course of administration proceedings. It was a claim arising on contract. It was certain in amount. It was due absolutely and clearly within the provisions of G. S. 1894, Section 4511, which requires that such claims must be presented to the probate court within the time limited by an order of the court theretofore made (which time had expired in this case), and, if not so presented, to be forever barred."

75 Minn. 481, *Fitzhugh v. Harrison*. The court says (page 489):

"A contingent claim, if it becomes absolute, and capable of liquidation, before the expiration of the time limited for the presentation of claims to the probate court for allowance, must be presented, or it will be barred. Gen. St. 1894, Sec. 4511; Hantzch v. Massolt, 61 Minn. 361."

In the case in which certiorari is now asked for, every requirement of the statutes of the state was complied with and every act authorized by statute to be performed in the course of administration was performed, which would seem to render it unnecessary to cite decisions to show that the admin-

istration was closed, the administrator gone out of office and the jurisdiction of the probate court at an end. But that such was the effect of what was done is well established by the following decisions:

33 Minn. 94, *State v. Probate Court of Sibley County.* On page 96 the court says:

"The want of jurisdiction in this case is still further emphasized by the fact that the administration has been closed by the allowance of the administrator's accounts and his discharge and there is no attempt to re-open it. So long as it remains closed the probate court has no more jurisdiction over the estate, or the property belonging to it, or which once belonged to it, than if there had never been any administration and there was no attempt to institute one. The jurisdiction of the court has been fully exhausted, and it can do nothing further unless it is restored in the manner pointed out in the statute."

37 Minn. 160, *Hurley v. Hamilton.* On page 161 the court says:

"The statute never contemplated a proceeding in probate court for the purposes of partition after the administration is closed and the lands assigned or turned over to the heirs or devisees. When that is done, the property has passed out of court, and the probate court has no longer any jurisdiction over it. Any proceeding thereafter for partition would not be a step in the administration of the estate of a deceased person, and hence would not be within the jurisdiction of the probate court."

40 Minn. 296, *State v. Probate Court of Ramsey County.* The court says (page 299):

"The object of the application on the part of the acting administrator was to submit his final account and close the administration. The order

made was evidently so intended, and must be construed as a final order discharging the administration of the estate. The parties had their remedy by appeal, but the order could not be attacked collaterally or treated as void, so as to warrant subsequent proceedings to reach the real estate as if the administration was still in progress and the estate still unsettled.

"The omission of the land from the inventory, and the subsequent discovery of the real estate of the deceased which was not reduced to assets by the administrator or distributed to the heirs do not operate to revive the administration and open the judgment, or warrant further proceedings. The land descended to the heirs, subject to the claims of administration upon it. The effect of a decree assigning the real estate to the heirs is simply to discharge it from the administration, and, of course, the final discharge of the administration must discharge the lien of the creditors."

47 Minn. 22, *Stackhouse v. Berryhill.* After an estate had been administered as intestate, a proceeding to probate a will of the deceased was instituted. The court says (page 22):

"Here the proceedings had terminated, and a final decree had been entered, when the will was presented to the probate court. The letters of administration were beyond recall, for their mission had ended. The order of the court whereby this will may be allowed in this state cannot of itself reverse the first administration, nor will it have the effect to vacate and set aside the final decree therein."

In the estate involved in the case last cited, the will was subsequently admitted to probate (in a separate proceeding from the administration of the estate as intestate) and an application made for sale of the real property to pay expenses of admin-

istration. The proceeding was under review by the Supreme Court in 57 Minn. 109, *In re Thompson's Estate*. The court says (page 113):

"If it be conceded that real estate may be sold to pay charges of administration, and that, with a view to payment of such charges and debts and legacies, he may take possession of real estate, still in this case there could be no legitimate charges of administration, and there were no debts or legacies. There could be no legitimate charges of administration, for there was nothing to administer. There had already been full administration."

58 Minn. 29. *In Re Charles Scheffer's estate*. (Pages 34, 35):

"In the exercise of their functions by probate courts, things that are mere formalities are not required. On the matters of closing administration, of discharging the executor, or relieving him of further responsibility, an accurately drawn and formal order or decree may not be necessary. But there must be some order or decree which contains the substance of the matter, which shows that the attention of the court was directed to it, and that it intended the result claimed. That must appear with certainty, beyond mere conjecture."

In the case cited no decree of distribution had been made, and this fact was relied on by counsel to show that the probate court retained jurisdiction.

61 Minn. 91, *Schmidt v. Stark*. (Pages 92, 93):

"The probate code neither authorizes nor provides for an assignment of any part of the estate of a deceased person until after the estate is fully administered. It contemplates but one decree of distribution, by which the entire residue of the estate shall be assigned to those entitled to it, specifying the proportion or part to which each is entitled.

G. S. 1894 Secs. 4639-4642. Read in the light of the statute and of the admissions of the answer, we think the complaint would fairly admit of being construed as alleging that all this had been duly done, and that the proportion of the estate assigned to plaintiff was an undivided fifth. If this was the state of facts, the jurisdiction of the probate court over the property had ended. The effect of a decree of distribution is to transfer the title to the personalty and the right of possession of the realty from the personal representative to the distributees, devisees or heirs. The property then ceases to be the estate of the deceased person, and becomes the individual property of the distributees, with the full right of control and possession, and with the right of action for it against the personal representative if he does not deliver it to them. If such an action is necessary, resort must be had to some other forum, for the probate court has no further jurisdiction. Hurley v. Hamilton, 37 Minn. 160."

This case in which certiorari is now asked, was disposed of by the Court of Appeals on the opinion in the case of Security Trust Co. v. Dent (104 Fed. Rep. 380). That court assumes that the probate court was of opinion that it retained jurisdiction to enforce its decree, and holds that it did so retain jurisdiction, because, it says, to hold otherwise would be to "deny to the probate courts of the state the right to enforce such orders relative to the distribution of estates as they may see fit to make, leaving the administrators,when final settlements are approved, in full possession of all the property in their hands, and at liberty to deal with it as they please until they are called to account by some other tribunal than that from which they originally devised their au-

thority." But the Supreme Court of the state has decided that under the constitution and laws of Minnesota that is just the situation, and that in such case the probate court has no jurisdiction to enforce its order, but resort must be had to another court. In *Schmidt v. Stack*, cited above, the Supreme Court of Minnesota, says:

"The effect of a decree of distribution is to transfer the title to the personalty and the right of possession of the realty from the *personal representative*" (meaning of course administrator or executor) "to the distributees, devisees or heirs. The property then ceases to be the estate of the deceased, and becomes the individual property of the distributees, with the full right of control and possession, and with the right of action for it against the *personal representative* if he does not deliver it to them. *If such an action is necessary, resort must be had to some other forum, for the probate court has no further jurisdiction.* Hurley v. Hamilton, 37 Minn. 160."

This is necessarily true, for the final decree of the probate court only adjudges the right to the succession and that the administrator as such no longer has the right to possession—34 Minn. p. 336, *Farnham v. Thompson.*—The administrator, or a third party, may have acquired the title from the heirs and next of kin, or the administrator may hold possession under a valid pledge created before the death of the intestate. The probate court has no jurisdiction to try any of these claims to the right of possession. Because the succession, by reason of the death, devolved upon certain persons ascertained by the final decree, it does not follow that the right of pos-

session is in fact in those persons at the date of entry of the final decree. The opinion of the Court of Appeals, is squarely in conflict with the decisions of the Supreme Court of the state on this proposition.

The assumption by the Court of Appeals that the probate court was of opinion that its jurisdiction continued, is unfounded in fact, for, (though it does not appear in the record it is true) in this Black River National Bank case, an application had been made to the probate court for leave to present this claim just before commencing suit in the Circuit Court, and the probate court denied the application on the ground that it no longer had jurisdiction, the estate having been finally settled. Nor did the record before the Court of Appeals, in our opinion, justify the assumption that the probate court was of opinion that it retained jurisdiction after the entry of the final decree. The assumption of the Court of Appeals was based on the fact that the probate court subsequently, on petition, corrected its final decree, by correcting the description of certain property mentioned in it, and by adding certain property which was not described in it. An examination of the petition shows that it was not presented by "the administrator" as such. It recites that the administrator had theretofore been discharged, and the petition is made by the Trust Company in its individual capacity and not as administrator. (For this petition see record, pages 18, 19). The order of correction itself does not proceed upon the

theory of an existing office of administrator. It says petitioner "was administrator," i. e., had been such, and assumes to correct certain "*clerical errors.*" Moreover the correction of the decree was not an act in the administration of the estate. It added nothing to the decree and took nothing from it, for the decree distributed not only the property particularly described in it, but in terms "all other property of the deceased in the state of Minnesota." The property added by particular description by the amendment only served to particularize the property covered by the general description "all other property," and was fully disposed of by the decree without the amendment. Being a court of record it had the right to correct its record at any time, and it was expressly authorized to do so by statute, Sec. 4730, which is as follows:

"The probate court, may, at any time, correct, modify or amend its records to conform with the facts in the same manner as a district court."

It would have the right to make the amendment after the lapse of ten years.

But, even if the probate court had supposed it retained jurisdiction, it was immaterial. The decisions above cited establish that it did not retain jurisdiction. Its jurisdiction being at an end, it could not revive it by any such supposition.

The Court of Appeals seems to think jurisdiction was retained until a formal order of discharge should be made. But our statutes do not provide for nor authorize any such order. The statute

provides only for a "*settlement and allowance*" of a final account, and the entry of a decree of distribution "after the estate has been fully administered." (All of which was done in this case). That marks the end of administration. The Supreme Court in the case cited hereinbefore has said that no formal order of discharge is necessary.

The Circuit Court of Appeals is of opinion that the right of the non-resident creditor cannot be made to depend on the length of time a probate court happens to allow for making a final settlement. It cites no authorities in support of its opinion, and, as we think gives no reason for it. There are two reasons why its opinion, as applied to this case, is not well founded. First, the statute of this state is a statute of limitation. Second, the probate court had the estate in its possession, and jurisdiction to dispose of it. When once it had lawfully adjudged the estate free from the claims of administration, and distributed the property, the estate was disposed of and there was nothing against which a claim could be established.

This is a statute of limitation, for it bars the claim after a certain time. Every creditor has at least six months in which to present his claim. Under certain circumstances he may have more. That the court in its discretion for cause shown may give time additional to the six months does not change the nature of the statute. It is in accordance with a sound public policy that estates be speedily settled. It is entirely proper that estates should not remain long tied up in adminis-

tration proceedings to await the action of dilatory creditors; as it is also proper that a creditor may be let in after the time fixed, if it will not unduly delay the closing of administration. All statutes of limitation are more or less flexible. In case of statutes limiting the time to commence actions for fraud, usually it is held that the action must be commenced with reasonable diligence, and that may require the action to be commenced long before the time fixed by the statute has run. Likewise, infancy, insanity, absence from the state, extend the general statute of limitations. No question is made, and none can be, that six months is not a reasonable time to allow in which to present the claim. See 45 Minn., pp. 168, 168, Hill v. Townley; 168 U. S. 88-91, Turner v. People of N. Y.

While, perhaps, no statute in terms exactly like this has come before the federal courts, statutes of much the same nature, and having the same object have frequently been sustained by the federal courts.

51 Fed. Rep. 405, *Priest v. Glenn*, is a decision by C. C. A. Eighth Circuit, which assumes that a statute, in substance the same as the Minnesota statute, is a statute of limitations and binding on the Federal courts. The court says (page 408):

"The second point made on the argument of counsel for plaintiff in error is that the statute of Missouri requiring the presentation of claims against estates of deceased persons within two years of the publication of the notice of the appointment of the executor or administrator bars recovery on their cause.

"This action was brought within two years after the cause of action was created by the assessment made in March, 1886, and, according to the construction placed upon the statute by the supreme court of Missouri, the two-year period does not begin to run until the right of action has accrued. (Citations). The bar of the statute had not, therefore, become complete when the action was commenced."

18 Fed. Rep. 199, *Miner v. Aylesworth*, holds that a statute limiting the commencement of actions against administrators to three years from the publication of notice of his appointment is binding on the federal courts.

113 U. S. 449, *Morgan v. Hamlet*, held a statute, substantially like the Minnesota statute, to be binding on the federal court. It was an action in equity. The court said (page 451):

"In Arkansas it appears that there is a special statute of limitations governing claims against estates of deceased persons, commonly called the statute of non-claim. It is as follows:

"All claims not exhibited to the executor or administrator, as required by this act, before the end of two years from the granting of letters, shall be forever barred."

Again (page 452):

"Whatever its description, it was a claim against the estate of John G. Morgan, and for which his personal representative was in the first instance liable; and the statute is a bar to every such claim, unless presented within the time prescribed."

27 Fed. Rep. 405, *Dodd v. Ghiselin*, holds that the laws of the state for settlement of estates of deceased persons are binding on the federal courts.

10 Fed. Rep. 53, *Pulliam v. Pulliam.* In this case, reconsidering a former decision by him in the same action, Judge Hammond, on pages 73 to 79, examines and discusses the grounds upon which such statutes stand, more fully than any other opinion we have seen, except, perhaps, the opinion in Jones v. Drewry, next herein cited. He concludes that they are not only statutes of limitations, but also rules of property and binding on the federal courts, and that the contrary contention finds no support in Union Bank v. Jolly, Payne v. Hook and other cases cited.

72 Ala. 314, *Jones v. Drewry.* In this case the point was squarely raised, fully discussed and decided. The question was examined and the decision was in favor of our contention. Although it is a decision of a state court we cite it, because it was in Alabama that the case of Suydam v. Broadnax arose, and became the decision in that case was urged on the Alabama court as settling the question against our contention.

19 Fed. Cases (Case No. 11376), page 1260, *Pratt v. Northam*, opinion by Justice Story, holds a like statute to bind the federal courts, even in equity. He says (page 1261):

"This statute of limitations as to executors and administrators, is not created for their own security or benefit; but for the security and benefit of the estates, which they represent. It is a wholesome provision, designed to produce a speedy settlement of estates, and the repose of titles derived under persons who are dead."

10 Fed. Cases (No. 5630), page 832, *Goshorn v. Goshorn*, held a statute, requiring an action to charge the widow and heirs for the debt of the ancestor to be commenced within one year, binding on the federal court in an action in equity. The statute also, in terms, required the action, if more than one person were liable (which was the case in the action then before the federal court) to be filed on the chancery side of the "Court of Common Pleas," a state court.

88 U. S. (21 Wall) 503, *Kirby v. McGlynn*, (Broderick's will). In this case, "An act to regulate the Settlement of Estates of Deceased Persons," and providing for such proceeding to be had in the Probate Court, contained a provision that any person wishing to contest the validity of a will admitted to probate, might do so within a year after the probate of the will, by filing in the probate court a petition to revoke the will, was recognized as binding upon the federal court, even in an action in equity.

147 U. S. 647, *Bauserman v. Blunt*. We are unable to see how on principle it can be held that the Minnesota statute as to claims against the estates of deceased persons are any less binding than the Kansas statutes considered in the case of Bauserman v. Blunt.

The proceeding of the probate court was *in rem*. The entire estate was in its possession, (149 U. S.

608, 615, *Byer v. McAuley*,) and the final decree was binding on all the world.

61 Minn. 343, M'Namara v. Casserly.

62 Minn. 35, 36, Ladd v. Weiskopf.

116 California, 359, The William Hill Co. v. Lawler.

The court had the property in its possession, with jurisdiction and for the purpose of establishing claims against it, and, so far as necessary, to use it to pay those claims, and to adjudge it free from claims at the proper time. The creditor of the deceased had no lien on the property. It had simply the right to establish a claim against that property before the court should finally dispose of it. If it neglected to establish its claim against the fund before the court had adjudged it free from the claims of creditors and distributed it, it lost its right.

The fact that the statute requires the claim to be presented to the probate court for allowance does not invalidate it as against non-resident creditors. Such provision is necessary to any orderly or effective administration of the estate. The federal courts have always recognized this to be true. The judgment of the court now complained of, orders that it be presented to the probate court.

132 U. S. 484, *Rio Grande R. Co. v. Gomila*:

"We do not question the general doctrine laid down in Yonley v. Lavender, 88 U. S. 276, 279, 280, to the effect that the administration laws of a state are not merely rules of practice for the courts, but laws limiting the rights of the parties, and

will be observed by the federal courts in the enforcement of individual rights, and that those laws upon the death of a party withdraw the estate of the deceased from the operation of the execution laws of the state, and place them in the hands of his executor or administrator for the benefit of his creditors and distributees. * * * We do not recall any case now where the federal courts have not paid respect to the principle that all debts to be paid out of the decedent's estate are to be established in the court to which the law of his domicil has confided the general administration of estates, etc."

The following, also is pertinent at this point:

172 U. S. 358, *M. K. & T. Trust Co. v. Krumseig*:

"We think it a satisfactory reply to such a proposition that the complainants in the present case were not seeking equity, but to avail themselves of a substantive right under the statutory law of the state. It seems to be conceded, or, if not conceded, it is plainly evident, that if the cause had remained in the state court where it was originally brought, the complainant would have been entitled, under the public policy of the state of Minnesota, manifested by its statutes as construed by its courts, to have this usurious contract canceled and surrendered without tendering payment of the whole or any part of the original indebtedness. The defendant company could not, by removing the case to the federal court, on the ground that it was a citizen of another state, deprive the complainants of such a substantive right. With the policy of the state legislation the federal courts have nothing to do. If the states, whether New York, Arkansas, Minnesota, or others, think that the evils of usury are best prevented by making usurious contracts void, and by giving a right to the borrowers to have such contracts unconditionally nullified and canceled by the courts, such a view of public policy, in respect to contracts made within the state and sought to be enforced therein, is obligatory on the federal courts, whether acting in equity

or at law. The local law, consisting of the applicable statutes as construed by the supreme court of the state, furnishes the rule of decision."

Admitting that the non-resident creditor cannot be deprived of the right to try a disputed claim in the federal court, it does not militate against the contention of plaintiff in error. The statute does not, in terms, nor by any fair intendment, prohibit suit in a federal court to try a disputed claim. No provision is made for a trial in the ordinary sense, in the probate court, of any disputed claim. It is true that the court may require satisfactory vouchers or proofs to be furnished—but a judgment of the federal court would be such voucher or proof. The claim is to be filed, i. e., presented at any time the creditor wishes. The proofs or vouchers are to be submitted at a later date fixed by the order of the court. The claim can be presented and suit to establish it commenced in the federal court. The statute does not require the claim to be established within the six months, but only to be presented within that time. The probate court in making its order allowing or disallowing, makes but a preliminary or prima facie findings. If the claim is disputed, the trial, as is ordinarily understood by the term, is to be had on an appeal to a court of common law powers and jurisdiction. The presenting of the claim to the probate court is not in any sense the commencement of an action. It is no more than a demand for payment. If it be objected to, that is a refusal.

Upon such objection being made, the claimant may submit the matter for decision to the probate court in the informal manner provided for in that court, or claim his right to a trial in the federal court, and commence his action in that court—or possibly after the order of the probate court allowing or disallowing the claim, may resort to the federal court instead of appealing to the state District Court. The state law, it is true, has not undertaken to specify in what way or at what time the creditor may resort to the federal court, for it has no authority to do so. The laws of the United States give that right, and the statutes of the state presupp se the right. Neither does the statute attempt to take away or abridge the right to resort to the federal court. There is no attempt on the part of the state to discrimina'e against non-residents, nor can there be any warrant for the federal courts to discriminate against citizens of the state, as is done in this case.

It can not be claimed that presenting the claim to the probate court would deprive the claimant of the right to resort to the federal court. He must present his claim to the probate court before it can share in the estate, and the federal court will require time to do so after judgment obtained if he does not do so before. The state has a right to require him to do so within six months, though it will be required to keep the administration pending until his right to payment shall be determined in the federal court, if he present the claim within the six months.

But, if it be considered that presenting the claim is the commencement of the suit, yet the statute is binding on the non resident creditor. When the jurisdiction of the federal court depends upon citizenship, as it does in this case, the substantive right is under the law of the state. The non-resident in such case has a choice of forums, but not of rights of action. The federal court, if he resort to it, is as to his claim, the probate court for the purpose of the establishment of his claim. While the method of procedure for establishing it differs in the federal court from the method in the probate court, the measure of his right is the same in each court. If he have no right which could be enforced in the probate court if he should choose that forum, he has none in the federal court. If the lapse of time has barred his right, it is barred in whatever court he chooses to enter. If he choose the federal court he must present his claim there within the six months or before the estate is settled, for after that time his cause of action ceases to exist.

On the other hand, if it be taken that the administration of the estate, including the making and publishing of the order fixing time to file claims is the commencement of the proceeding, and the presenting the claim an appearance by the claimant, the right of removal given by the federal statute prescribes the method of getting into the federal court. Of course the removal would have to be made before the proceeding had run its full course.

The statutes of Minnesota, here in question, are

substantially of the same sort as those cnosidered in 133 U. S. 473, *Delaware Co. v. Diebold Safe and Lock Co.* This case probably prescribes the method in which the claimant in this case properly could have gone into the federal court. Gen. Statutes 1894, Secs. 4665, 4673, regulating appeals from the probate court in Minnesota, taken in connection with the statutory provisions hereinbefore set out, will show the application of the decision in *Delaware Co. v. Diebold Safe and Lock Co.*—to this case.

It seems to us that the questions involved in this case are of such importance, that, if the law is as declared by the Circuit Court of Appeals, the courts of the state of Minnesota, and of the many other states having similar probate systems are entitled to have it so declared to be by the court of supreme authority, and, if the law is otherwise they are entitled to have the doubt and uncertainty raised by that decision removed. We submit that the order made by the Circuit Court of Appeals staying its mandate to give an opportunity to apply for the writ of certiorari is potent evidence that it considers this a case to justify this court in issuing the writ.

Furthermore, the case of Security Trust Co. v. Dent was heard both in the Circuit Court and the Court of Appeals with this case, and this case was disposed of by the Circuit Court of Appeals on the opinion in that case. Writ of error lies in that case, but not in this. We have taken steps to remove that case to the Supreme Court on writ of

error, and such writ has already been issued. Simple justice would seem to require that this case accompany it to the Supreme Court, even though the questions involved were not sufficient in themselves to require this case to be certified.

We respectfully submit that a writ of certiorari should be granted as prayed in the petition.

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